

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60750

FILE: B-185468

DATE: April 13, 1976

MATTER OF: Hy-Gain Electronics Corporation

99071

DIGEST:

Protest against sole-source award filed December 4, 1975, more than 10 working days after November 11, 1975, when protester by its own admission was advised in telephone conversation with contracting officer that basis for award was that protester's production was considered inadequate, is untimely, notwithstanding protester's statement that information received on November 11, 1975, was sketchy, unofficial and incomplete and that it did not know then that letter contract had not been definitized.

On December 4, 1975, Hy-Gain Electronics Corporation filed a protest against the sole-source award of contract DAAB07-76-C-0085 to Lapointe Industries Incorporated by the United States Army Electronics Command, Fort Monmouth, New Jersey. In the letter of protest, Hy-Gain stated that it did not learn of the award of the contract until November 24, 1975.

However, in the report to our Office dated February 13, 1976, the Army stated that representatives from Hy-Gain were made aware of the award of a letter contract to Lapointe on October 31, 1975. Hy-Gain denies this. Nevertheless, in a letter of February 26, 1976, Hy-Gain admits that on about November 10, 1975 (November 11, 1975, according to the Army report), one of its representatives was advised in a telephone conversation with Captain Clark (a contracting officer at Fort Monmouth) that:

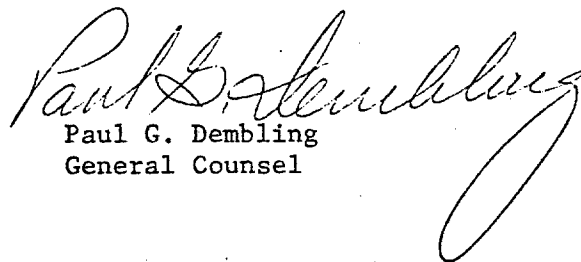
"* * * [T]here was a contract with Lapointe for 15,000 units, but that the award was made September 8, 1975. He also supplied the contract number and stated that the reason for the award to Lapointe was that it was a sole source. He also said the government did not believe Hy-Gain's production to be adequate."

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Section 20.2(b)(2) of the Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), states:

"* * * bid protests shall be filed not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier."

It is apparent from Hy-Gain's statement quoted above and the agency report that Hy-Gain knew by November 11, 1975, from an official source that the basis for the sole-source award to Lapointe on September 8, 1975, was that Hy-Gain's production was considered to be inadequate. Therefore, the filing of the protest on December 4, 1975, more than 10 working days after November 11, 1975, is untimely, notwithstanding statements by Hy-Gain that the information received on November 11, 1975, was sketchy, unofficial and incomplete, and that it did not know then that the letter contract had not been definitized. Accordingly, we are closing our file on the protest without any consideration of the merits.


Paul G. Dembling
General Counsel